



LuAnne Kozma <luannekozma@gmail.com>

Fwd: Proposed Findings of Fact from Laws

Ellis Boal <ellisboal@voyager.net>
To: LuAnne Kozma <luannekozma@gmail.com>

Sun, Jan 30, 2022 at 9:44 AM

----- Forwarded Message -----

Subject: Proposed Findings of Fact from Laws**Date:** Sat, 29 Jan 2022 15:38:20 -0500**From:** Tom Darnton <tdarnton@me.com>**To:** Kristin Baranski <clerk@hayestownshipmi.gov>, Tom Darnton <tdarnton@me.com>, Bruce Deckinga <bdeckinga@gmail.com>, Roy Griffiths <rwgriffits3@gmail.com>, Bob Jess <rjess@hotmail.com>, Doug Kuebler <hayestrustee5@gmail.com>, Ron VanZee <Supervisor@hayestownshipmi.gov>**CC:** Ellis Boal <ellisboal@voyager.net>, Harry K. Golski <hgolski@cvxlaw.com>

Colleagues,

Attached is a copy of proposed Findings of Fact which I received from Harry Golski, the attorney for the Laws. After consulting with counsel, I am distributing this to the members of the ZBA for consideration. We are not required to take this document into account but may choose to do so.

Tom

2 attachments **Law Proposed Findings.pdf**
117K **Attached Message Part**
1K

PROPOSED FINDINGS/INTERPRETATIONS

Scott and Debra Law submit the following proposed Findings/Interpretations to the Hayes Township Zoning Board of Appeals for consideration and adoption:

SHORELAND PROTECTION STRIP

Excavation does not constitute erection of a “structure” *Section 2.02* and is allowable within a Shoreland Protection Strip provided that:

- a) No more than 20% of the area in the Shoreland Protection Strip is affected; *Section 3.14.3A*
- b) The Shoreland Landscaping Plan has been approved and by the Planning Commission after input from the Shoreland Protection Committee; *Section 3.14.8C*
- c) All governmental permits have been obtained prior to commencement of work; *Section 3.14.8Aii*

ORDINARY HIGH-WATER MARK

The setback required for residential structures from Lake Charlevoix is measured from the legally established Ordinary High-Water Mark located at 582.3’ IGLD 1985, regardless of the physical location of the water’s edge; *Section 2.02*

REVIEW OF APPLICATIONS FOR ADDITIONS TO RESIDENTIAL STRUCTURES ON WATERFRONT PARCELS

A proposed addition to an existing structure on a waterfront parcel which adds less than 50% newly created spatial area is subject to administrative review by the Zoning Administrator with input from the Shoreland Protection Subcommittee. The application must contain a Plot Plan as described in Section 5.02 and a Shoreland Landscaping Plan as described in Section 3.14.8A; *Section 3.14.8D*

Respectfully submitted,

Harry K. Golski
Attorney for Scott & Debra Law



LuAnne Kozma <luannekozma@gmail.com>

Rebuttal to Laws' proposed findings/interpretations

Ellis Boal <ellisboal@voyager.net>

Tue, Feb 1, 2022 at 12:47 PM

To: kristin baranski <clerk@hayestownshipmi.gov>

Cc: LuAnne Kozma <luannekozma@gmail.com>, Irene Fowle <izfowle@gmail.com>, Lisa Hicklen <lisahicklen@charter.net>, Harry K Golski <hgolski@cvxlaw.com>, Todd Millar <tmillar@parkerharvey.com>


Kristin,

Please distribute this to the ZBA members and alternate. We understand the ZBA may or may not consider the Laws' proposed findings, but if it does we ask it also to consider the attached rebuttal.

Thanks.

Ellis

2 attachments

 **zba7.lt.pdf**
18K **LawProposedFindings-Rebuttal.pdf**
139K



LuAnne Kozma <luannekozma@gmail.com>

Rebuttal to Laws' proposed findings/interpretations

Ellis Boal <ellisboal@voyager.net>

Tue, Feb 1, 2022 at 1:29 PM

To: kristin baranski <clerk@hayestownshipmi.gov>

Cc: LuAnne Kozma <luannekozma@gmail.com>, Irene Fowle <izfowle@gmail.com>, Lisa Hicklen <lisahicklen@charter.net>, Harry K Golski <hgolski@cvxlaw.com>, Todd Millar <tmillar@parkerharvey.com>

Kristin,

Sorry we just noticed a typo in the file "*LawProposedFindings-Rebuttal.pdf*".

On page 2 near the bottom we wrote: "because tree roots are strictly prohibited."

We meant to write: "because tree root removal is strictly prohibited."

Please notify everyone of this correction.

Thanks.

Ellis

[Quoted text hidden]

9330 Woods Road
Charlevoix, MI 49720
February 1, 2022

Zoning Board of Appeals
c/o Kristin Baranski, Secretary
Hayes Township
9195 Major Douglas Sloan Road
Charlevoix, MI 49720
clerk@hayestownshipmi.gov

Re: Requesters LuAnne Kozma, Irene Fowle, Elisabeth Hicklen
Property owners Scott & Debra Law
Tax code # 15-007-132-005-25
Interpretation requests 9-27-21
ZBA hearing: 1-26-22
Requesters' Rebuttal to Law Proposals

ZBA Members: Tom Darnton, Roy Griffiths, Doug Kuebler
ZBA Alternate: Bruce Deckinga

Dear Hayes ZBA:

Attached is Requesters' rebuttal to the Proposed Findings/Interpretations of Scott and Debra Law.

Very truly yours,



LuAnne Kozma, *luannekozma@gmail.com*



Ellis Boal, *ellisboal@voyager.net*

c: Irene Fowle, *izfowle@gmail.com*
Elisabeth Hicklen, *lisahicklen@charter.net*
Scott & Debra Law, c/o Harry Golski, *hgolski@cvxlaw.com*
Todd Millar, *tmillar@parkerharvey.com*

**Requestors' Rebuttal to
Proposed Findings/Interpretations of Scott and Debra Law**

Laws: “Excavation does not constitute erection of a “structure.”

Rebuttal:

Wrong. See ZO definitions in 2.02 of “structure,” “erected,” “lot line, front,” “setback,” “setback, front,” and “building envelope.” A “structure” is “anything constructed or erected, the use of which requires location on the ground or attachment to something having permitted location on or below the ground.” A canal and boat basin requiring massive excavation are both constructed and erected, and require specific locations on the ground—adjacency to Lake Charlevoix, adjacency to each other, and to the proposed boathouse/dining/event center, which itself requires excavation as part of its building design as seen on site plans submitted to the township in Exhibits 2 and 3, and to the state and federal governments in the joint permit application in Exhibit 18. Excavation of both the basin and canal would be required in the erecting of the proposed building, thus part of its “building envelope.” “Erected” “Includes built, constructed, reconstructed, extended, enlargement, moved upon, or *any physical operation on the premises intended or required for a building or structure.* *Excavation*, fill, drainage, and general land improvements shall be considered part of erection.” This was covered in petitioners’ Slide 17 at the January 26 hearing. The front lot line for a shore property is the OHWM, and the front setback is the setback from there, where no structures may be set with the exceptions of 4 things described in § 3.14(2). An excavated canal and boat basin constructed to accommodate a boathouse building are none of the four.

Laws: “Excavation . . . in the Shoreland Protection Strip is allowable provided that “the Shoreland Landscaping Plan has been approved and by the Planning Commission after input from the Shoreland Protection Committee; Section 3.14.8C”

Rebuttal:

Section 3.14(8)(A) states it is the “intent of the Waterfront Development Review process . . . to promote the gradual, systematic, and long-term restoration of the Shoreland Protection Strip.” Subsection (iii) states the advisory committee is to “facilitate compliance” with the ordinance, namely about how to restore disturbances or violations that have already occurred, outlined in § 3.14(3)(K) and apply the corrective measures in subsections I, II, III, and IV. Not *enable* and recommend disturbance and allow for tree root removal.

Section 3.14(8)(B)(iii) in Waterfront Regulations requires a review process and a Shoreland Landscaping Plan with a “detailed inventory of planned changes to the 50-foot Shoreland Protection Strip area, including tree removals and/or plantings, vegetation removal and/or plantings.” It asks for a “detailed inventory of all structures within 100 feet of the Ordinary High Water Mark.”

The inventories required do not ask for planned earth changes, because disturbances and structures requiring excavation are already not allowed as evidenced in the strict requirements outlined in 3.14(2), 3.14(3)(B), 3.14(3)(D), 3.14(4)(H), and 3.14(3)(K). There are only four named structures that are excepted but only with restrictions that require those structures to do little to no harm to the Shoreland: **patios/decks** must be at grade, no larger than 200 square feet and “installed in a manner which will cause the least negative environmental impact”; **walkways** must be not larger than 6 feet wide, be constructed “in such a way to take the “most environmentally sensitive route between each destination” and not constructed as to expand the deck beyond the 200 foot maximum; **launching ramps and docking facilities** must meet requirements set in 3.14(3)(K) allowing only soils or rocks “consistent with the composition of the pre-existing on-site soil and rocks.” Docks shall not damage the Shoreland and any damage shall be repaired, § 3.14(4)(H). Only these structures could be on required inventories in 3.14(8)(C). No structures or activities involving removal of tree roots are allowed because tree roots are strictly prohibited in 3.14(3)(H) in all of the Shoreland Protection Strip. Section 3.14(3)(B) states: “*for any new construction or renovation of a structure located on a waterfront lot, **the establishment, restoration or renovation of a Shoreland Protection Strip shall be required.***”

Laws: “No more than 20% of the area in the Shoreland Protection Strip is affected. Section 3.14.3A”

Rebuttal: Whether the Laws’ hoped-for destruction of a 50 x 30’ portion of Lake Charlevoix Shoreland Protection Strip is or is not “no more than 20%” the mandate in § 3.14(3) does not permit *any* destruction of the Shoreland Protection Strip because it is *unambiguously* “all of the land area” within 50 feet of the OHWM. The definition of Shoreland Protection Strip in § 2.02 is “a strip of *land* fifty feet in depth *landward* from the Ordinary High Water Mark, placed as to be parallel to the body of water.” The OHWM for Lake Charlevoix as defined in the ordinance is an elevation of 582.3 feet (IGLD 1985) that is the dividing line between uplands and bottomlands. The Shoreland Protection Strip, by definition is uplands, not bottomlands. Therefore all of the uplands is what is being protected, “shall be required on all waterfront lots” and “shall include *all of*

the land area located within 50 feet of the Ordinary High Water Mark.” It must be there, as uplands, in order to “provide a filter” of harmful pollutants before it reaches the water resource as §3.14(3) says at the very beginning. It does not follow that right afterward, in subsection (A) that 20 % of the uplands can be disturbed permanently and removed. Subsection (A) only says 20% can be *altered*, as later subsections proscribe for up to 20% *vegetation* removal, but it does not say 20% can be disturbed. Removal of the uplands strip would be permanent, irreparable disturbance.

Affirming this meaning, in Petitioners Exhibit 38, “*Protecting Inland Lakes: A Guide for Local Governments*” on page 15 it states “‘Undisturbed’ means no construction, no earth-moving activities...”

Section 3.14(3)(H) is about vegetation removal: “Natural vegetation cover, including trees, shrubs or herbaceous plants shall be maintained on at least eighty percent (80%) *of the lake or stream frontage within the Shoreland Protection Strip*... The vegetation on the *remaining 20%* may be cleared for a single view corridor; or select trees removed to provide for a filtered view throughout the frontage, provided the cumulative total of the trees removed does not exceed the allowed twenty percent (20%) of the frontage. When trees are removed, root systems shall be left in place for shoreline stabilization.”

Interpreting subsection (H), the word “frontage” is equivalent to “land.” “The remaining 20%” in that clause refers to the remaining “frontage.” The purpose of subsection (H) is to allow the clearing of vegetation in two different styles, in order to provide a view of the lake in either a “single corridor view” or a “filtered view” as illustrated. As long as the vegetation removal cumulative total doesn’t exceed 20%.

Subsection (H) is consistent that soil cannot be disturbed or removed, in the prohibition against tree root removal. Also consistent is § 3.14(4)(H) about “damage” to the Shoreland Protection Strip (uplands, not bottomlands) caused by seasonal docks, which *shall* be repaired, and § 3.14(4)(E) which does not allow undocked boats to disturb the Shoreland Protection Strip.

Section 3.14(3)(I) is about tree trimming, (of branches of a living tree) in addition to the vegetation and tree removal (but not tree *root* removal) allowed in the preceding subsection (H). It states “selective trimming of trees to allow for filtered views is permitted within the Shoreland Protection strip so long as the overall health of the tree is not compromised and is not included in the *allotted 20% removal*.”

Section 3.14(3)(K) states “it is in violation of the zoning ordinance to *alter or disturb* the Shoreland Protection Strip *except* to remove dead trees or shrubs, remove invasive species, or for selective trimming of trees as permitted in 3.14.3I. “If altered or disturbed, the following corrective measures are required” and then lists the measures, requiring replanting with native species and requiring removal of offending “fill material” that are soils and rocks not “consistent” to the shoreland. “Placement of beach sand is prohibited.”

To summarize, section 3.14(3)(A) —“The Shoreland Protection Strip shall not be *altered* more than 20% under any condition, except to remove dead trees or shrubs, remove invasive species, or for selective trimming of trees as permitted in 3.14.3I.” — is in keeping with the 20% of vegetation removal of (H), the tree trimming in (I), and the removal of invasive species in (J). Subsection (A) only refers to altering, not disturbing, and the specific reference to 20% is consistent with the vegetation-related 20% allowances mentioned elsewhere in the ordinance. There is no corresponding section in the ordinance allowing 20% *disturbance* and removal of land that § 3.14(3)(A) could possibly be referring to.

The purpose of the Shoreland *Protection* Strip, its definition, and the § 3.14 requirement that it is “all of the land,” not 80% of the land (uplands), to remain in place in order to filter pollutants before reaching the water body, all of which is unambiguous, construes subsection (A) to mean removal of the very Shoreland Protection Strip is prohibited, as it is counter to its *protection*. § 3.14(3)(B) brings the point home: that for “any new construction or renovation of a structure located on a waterfront lot, the *establishment, restoration and/or maintenance* of a Shoreland Protection Strip *shall* be required.” It does not facilitate destruction.

Laws: “The setback required for residential structures from Lake Charlevoix is measured from the legally established Ordinary High-Water Mark located at 582.3’ IGLD 1985, regardless of the physical location of the water’s edge.”

Rebuttal:

Wrong. It’s the water resource the 100 foot land-based setback is trying to protect, §§ 3.14(1) and 3.14(2). The 100 foot setback also protects the Shoreland Protection Strip, so that structures are not right on the edge of the Shoreland Protection Strip. It does matter where structures are in relation to the “water’s edge.” The ordinance requires a 50 foot

Shoreland Protection Strip of land, but an additional 50 foot setback, also on land, past that, for structures.

What the Laws hope to construct is an extremely large building *over the water*, regardless of the Zoning Ordinance's strict prohibition against it.

What the Laws are now saying is the opposite of what they submitted in their applications to the Township in Exhibits 2 and 3, and to the State and federal governments in their joint application, Exhibit 18. Exhibits 24 and 34 showed the Laws' scale-drawing documents indicating the boat basin and channel elevation would be 570.0 IGLD 1985, which is by definition (and by simple arithmetic—570.0 is less than the 582.3 elevation of Lake Charlevoix's OHWM), bottomlands. The documents show the OHWM throughout the basin. In the joint application, Exhibit 18, the Laws answer the question as to what structures would be below the OHWM as boat house, boat basin, and channel. See petitioners' Slide 26. The OHWM is the dividing line between uplands and bottomlands. It is the dividing line as to where the public is allowed to go and use public waters (such as Lake Charlevoix) and the private land to which the public does not have access. Why the Laws would put the data truthfully in their official drawings and permit applications, and now impugn their own documents filed with Hayes Township, is goading the ZBA to ignore the evidence before them.

The Laws would not be able to get permits from the State or federal government unless they agreed and truthfully demonstrated how the structures they want to construct would be below the OHWM after excavating the uplands down to bottomland elevations. They cannot say to the Township the OHWM would not move horizontally after changing the *horizontal physical locations* where the uplands and bottomlands meet. The evidence in Exhibit 27 from EGLE and Exhibit 28 from the Army Corps confirms this. The Zoning Administrator was sent Exhibit 28 directly from the Army Corps, see Exhibit 36.

Laws: “ A proposed addition to an existing structure on a waterfront parcel . . . must contain ... a Shoreland Landscaping Plan as described in Section 3.14.8A; Section 3.14.8D.”

Rebuttal:

The Laws propose to build a large structure which triggers a review that in no way allows a “Shoreland Landscaping Plan” described in Section 3.14(8)(A) to do anything but “ensure compliance with the waterfront regulations described in 3.14(1-5)” which includes all of the protections written into the ordinance to protect the Shoreland

Protection strip from disturbance. 3.14(3)(B) again, reads “For any new construction or renovation of a structure located on a waterfront lot, **the establishment, restoration and/or maintenance of a Shoreland Protection Strip shall be required.**”

That enforcement and compliance requirement cannot be twisted into meaning “allowing” and enabling new disturbances instead of “establishment, restoration and/or maintenance” as corrective measures in §§ 3.14(3)(K) and 3.14(3)(H) prescribe. “The Shoreland Strip shall be replanted,” § 3.14(3) (K)(ii).

Nowhere in the chart in § 3.14(8)(D) indicates there is category of project that would enable a recommendation from a committee dedicated to shoreland protection, restoration, maintenance, and restoration, or an action by the Zoning Administrator, to throw all the Shoreland Protection Strip requirements out the window.